IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Appeal No.774 of 2003

Smt. Sunanda Chandrakant Juvatkar — Appellant
Vs.
State of Maharashtra — Respondent

Mr.J.N.Ghotekar & Mr.Amol Shinde for appellant.
Mr.A.S.Gadkari, APP for State.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

Reserved on : February 13, 2007.
Pronounced on : February 21, 2007.

JUDGMENT (PER B.H.MARLAPALLE,J.)

1. The appellant was charged along with her son Mangesh, of committing murder of Raghunath Paste, resident of Khanvali-Banewadi, Taluka Lanja, Dist. Ratnagiri on 26/1/2002 (in the night) in her house in the same village and her son Mangesh, being juvenile, was tried in Juvenile Criminal Case No.1 of 2003 by the Presiding Officer of the Board of Juvenile at Ratnagiri. He came to be acquitted as per the judgment and order dated 21st June 2003 whereas the appellant was tried in Sessions Case No.83 of 2002 and came to be convicted and sentenced for the offence punishable under Section 302 as well as Section 201 read with Section 34 of IPC by the learned Sessions Judge, Ratnagiri vide his judgment and order dated 8/4/2003. This appeal impugns the

said order of conviction and sentence passed in Sessions Case No.83 of 2002 and the appellant is presently undergoing the sentence of RI for life.

2. As per the prosecution, deceased Raghunath, husband of Subhadra Paste (PW 8) was alleged to be practising Dev-Devaski (a kind of black magic) on her family and her husband allegedly died on account of the same. She had, therefore, threatened the deceased that if he would not reverse the acts of Dev-Devaski, she would finish him. On 26/1/2002 her son Mangesh came to the house of Raghunath at about 6 p.m. and took him to the house of the accused purportedly telling him that the accused was not feeling well and, therefore, she had called the deceased. As Raghunath did not return, his wife PW 8 made visits to the house of the accused along with PW 1 - Ashok (her nephew) and her son and in the third visit to the house of the accused in the night of 26/1/2002, the accused opened the door and told PW 8 Subhadra that Raghunath had already left the house of the accused. As Raghunath did not return the whole night, Subhadra went to the Police Patil at about 7 a.m. on 27/1/2002 and thereafter her son told her that he had seen the dead body of Raghunath. She

went to the spot and identified the dead body. On information given by the Police Patil at about 11 a.m., the police arrived at the scene, dead body was recovered, it had number of injuries on the head as well as the entire body. The dead body was sent for post-mortem examination and Dr. Dilip Suryavanshi, In-charge Medical Officer, Primary Health Centre, Wadilimbu, Tal. Lanja, Dist. Ratnagiri (PW 5) had performed the autopsy and forwarded the post-mortem report at Exhibit 22. The cause of death recorded in the post-mortem report was haemorrhagic shock (hypovolemic) due to multiple injuries. There were in all 43 injuries noted on the body of the deceased and eight of them were on or around the skull. The accused were missing from the village on 27/1/2002 and both of them came to be arrested on 28/1/2002 at village Rhavadi bus stop, Tahsil Lanja. The arrest panchanama at Exhibit 31 was drawn by Head Constable Chavan. The seized as well as recovered articles were sent for chemical analysis by PW 9 - Shri Arjun Shankar Rane, the Investigating Officer on 14/2/2002 under the covering letter at Exhibit 38 and the CA reports were received at Exhibits 39 to 42. On completion of investigation the I.O. filed the charge-sheet on 26/4/2002. Charge was framed on

2/1/2003 by the learned Sessions Judge.

3. The prosecution had examined in all ten witnesses including PW 9 Arjun Rane, I.O. and PW 10 Purushottam Wagle. PW 3 Shivaji Bhuwad proved the spot panchanama at Exhibit 14, PW 4 Mohan Surve proved the recovery of weapons i.e. axe and sura which were used in committing the crime as well as one saree and one shirt. PW 7 Vijay Khanwilkar proved the recovery of wrist watch and torch belonging to the deceased PW 2 Dhondu Lingayat proved the inquest panchanama at Exhibit 11. PW 1 Ashok Paste, PW 8 Subhadra Paste, wife of the deceased and PW 9 Arjun Rane, the I.O. are the main witnesses. In his evidence PW 5 Dr. Dilip Suryawanshi stated that he found 40 injuries on the body of the deceased when he conducted the post-mortem on 28/1/2002 at about 9 a.m. and he signed the P.M. report at Exhibit 19 the contents of which were correct, and as per his opinion Raghunath died a homicidal death. The injuries caused on his body were by hard and sharp weapons. He denied the suggestion that the multiple injuries on the body of the deceased could be caused by wild animals and he also denied the suggestion that he did not notice any fracture on the

deceased. According to him the death of Raghunath had occurred 24 hours before the body was taken for post-mortem on 28/1/2002. He also admitted that at the instance of the police he had obtained blood from the dead body of Raghunath and the same was handed over to the police. The injuries noted in the P.M. report, which has been admitted by the defence were:

Head

(1) CLW over parietal region to frontal region in Medline Verticle, measuring 12 cm x 2 1/2 cm., skull deep, Margins regular.

(2) CLW over left parieto occipital region, horizontal measuring 6 cm x 1 cm skull deep, margins regular.

(3) CLW over parietal region, horizontal to injury no.1, measuring 3 cm x 1 cm. bone deep, regular margins.

(4) Laceration over right occipital region, 3 cm. x 2 1/2 cm, irregular margins, skin peeled off.

(5) Laceration over right fronto parietal region, 3 cm x 1 cm, skull deep, irregular margins.

(6) Laceration over frontal region, 3 cm x 2 cm, irregular margins, stained with blood and mud.

(7) CLW over right temporal region, 3 cm x 1 cm, bone deep, verticle regular margins.

Right ear

Torn at lower V3 of penna and ear lobule, 1.5 cm.

Face

(1) CLW over right mandibular region laterally, measuring 4.5 cm x 1 cm bone deep. Regular margins, bone deep.

(2) CLW over right maxillary region, 1 cm x 1 cm, bone deep, regular margins.

(3) CLW over left cheek to penna of right ear, 8.5 cm. x 3 cm., horizontal, ear ton, bone, margins regular.

(4) CLW over left cheek just below injury no.3, horizontal 7 cm x 1 cm, muscle deep, regular margins.

(5) CLW over left mandibular region, below injury no.4, just posterior to angle of mandible, 4.5 cm x 1 cm, bone deep regular margins.

(6) CLW over left mandibular region, centre of lower lip to lateral 1/3 of mandible 8 cm x 1.5 cm, bone deep margins regular.

Neck

(1) CLW over left lateral side of neck, 6 cm x 1/2 cm, fascia deep, margins regular.

(2) CLW over nape of neck V shape, muscle deep 2 cm x 4 cm.

Right upper limb

(1) CLW over right supra scapular (9 cms. from lateral side of neck) horizontal, measuring 4 cms x 1 cm., bone deep, margins regular.

(2) CLW over right shoulder point, oblique, 4 cm x 1 cm, muscle deep, regular margin.

(3) Contusion over right shoulder point 3 cm x 3 cm.

(4) CLW over right upper 1/3 of forearm, medially, 10 cm x 3 cm.

(5) CLW over right thinar anenince, 4 cm. x 1 cm, muscle deep, well defined margins.

Left upper limb

(1) CLW over left shoulder, horizontal, bone deep, 6 cm x 2 cm, regular margins.

(2) Contusion over left arm, laterally 15 cm from should point oblique 3 cm x 1 cm.

(3) CLW over left dorsal aspect of lower 1/3 of forearm 6 cm x 1 cm, bone deep, tendons cut, regular margins.

(4) CLW over left wrist, posteriorly 6 cm x 2 1/2 cm, bone deep # carpal bone, radius-ulna intact, tendons cut, carpal bones visible, regular margins.

(5) CLW over left thinar region, muscle deep, 5 cm x 1 cm, regular margin.

(6) CLW over anterior aspect of little finger, horizontal 2 cm x 1 cm, muscle deep, regular margins.

(7) CLW over post aspect of left elbow, 3 cm x 1 cm, muscle deep, regular margins.

Trunk

(1) Contusion over left infra-axillary region, laterally 4 1/2 cm x 1 cm.

(2) CLW over right infra clavicular region, lateral to zipesterum, horizontal 2 cm x 1/2 cm, fascia deep.

Back of chest

(1) CLW over right scapular region, horizontal 10

cm. x __ cm, fascia deep, margins regular.

(2) Contusion over right infra axillary region, 8 cm x 1 cm horizontal.

(3) Contusion over left supra scapular region, oblique 5 cm x 1/2 cm.

(4) Contusion over left scapular region, horizontal 3 cm x 1/2 cm.

Abdomen

(1) Contusion over left lumbo-scral region, 3 cm x 1/2 cm horizontal.

(2) Contusion over left lateral side of abdomen, oblique 3 cm x 1/2 cm.

Right lower limb

(1) CLW over right lower 1/3 of thigh 3 cm x 1/2 cm, muscle deep, horizontal, regular margins.

(2) CLW over lower 1/3 of leg, oblique. Laterally

5 cm x 2 cm. Compound fracture of Tibia fibula, bones are penetrating through wound, tendons cut, post tibal artery cut (right).

(3) CLW over right leg. Antero medial aspect just above injury no.2, horizontal 4 cm x 1 cm, bone deep.

(4) Contusion over right medial aspect of thigh 10 cm x 1/2 cm.

Left lower limb

(1) CLW over lower 1/3 of lateral side of leg, 5 cm x 3 cm, bone deep. Horizontal. Fracture. Lower 1/3 of left fibula, fracture lateral condyle of tibia.

(2) CLW over lateral side of ankle and foot, extending to heel 9 cm x 2 cm, bone deep, mendoris cut.

4. We have no doubt in our mind that the finding of the trial Court that Raghunath died a homicidal death on account of the injuries inflicted on his body is based on the medical opinion and the same is

required to be confirmed. There was no other reason for the cause of death of Raghunath other than the injuries inflicted upon his body by weapons like axe and sura (article nos.16 and 17 respectively) and though the doctor recorded the injuries around the skull of the deceased as CLWs, having seen the muddemal articles i.e. axe and sura we do not hesitate to hold that these injuries were in fact incised wounds. The attack on Raghunath by these weapons was dastardly and he was virtually butchered. Almost every part of his body had injuries. Under these circumstances, the only issue that remains to be considered by us is whether the prosecution proved beyond reasonable doubt that it was the accused who committed the murder of Raghunath in the night of 26th January 2002.

5. For the reasons to be elaborately stated hereinafter, in our opinion, the prosecution has proved the following circumstances against the accused:

(a) She was disturbed / annoyed and was under a belief that deceased Raghunath had performed Dev Devaski against her husband as well as other family

members and the family was suffering on that count. A few days before (about one week), the accused had given an ultimatum to the deceased to reverse his black magic of Dev Devaski practised on herself.

(b) Around 6 p.m. on 26/1/2002 the minor son of the accused studying in 10th standard at the relevant time had visited the house of the deceased and took the deceased to his house. As the accused did not return home within more than one hour, PW 8 Subhadra visited the house of the accused three times and the last visit was after 9 p.m. on 26/1/2002. During the earlier two visits the house of the accused was found locked and / or without any response, but in the third round PW 8 received the response of the accused and the accused told her that Raghunath had already left the house of the accused to go to his house.

(c) On the next day between 7 to 8 a.m. the dead body of Raghunath was seen by his son in the open yard of the house of the accused and, therefore, PW 8 went to the Police Patil Shri Shantaram Pawar of village Wadilimbu and he reported the matter to the police station at Lanja at about 11 a.m.

(d) PW 9 along with Constable Desai visited the spot at village Khanavali Banewadi and recovered the dead body of Raghunath by drawing the inquest panchanama at Exhibit 12. The complaint of PW 9 Ashok Paste was recorded and he was taken to the police station by Constable Desai for the registration of the complaint.

(e) On 27/1/2002 when the police party came to the spot the accused along with her son was not found in her house and both of them came to be arrested by Head Constable Chavan at Rhavadi bus stop, Tahsil Lanja on 28/1/2002. The walking distance between the village of the accused and Lanja police station is about 45 minutes to one hour.

(f) The bangles seized from the person of the accused and the bangles collected from the spot from where the dead body was recovered tallied with each other as per the CA report at Exhibit 41 and the bangles recovered from the spot were stained with blood of Group "AB" as per the CA report at Exhibit 40.

(g) The sweater and underwear seized from the dead body of Raghunath were stained with blood of group "AB" and the axe, sura as well as saree of the accused and recovered at her instance were found to be stained with blood of group "AB".

(h) The CA report at Exhibit 39 indicated that in the large intestine as well as the liver of the deceased 140 mg. and 136 mg. of ethyl alcohol per 100 gms. respectively was found.

(i) The recovery of bangles, weapons, saree, a shirt, wrist watch and torch has been proved by the evidence of panch witnesses viz. PW 4 Mohan Surve and PW 7 Vijay Khanwilkar.

(j) The wrist watch and torch recovered at the instance of the accused have been identified before the Court by PW 8 Subhadra (article nos.23 and 24). The wrist watch and torch were stained with human blood as per the CA report at Exhibit 40.

6. It was the case of the defence before us that the prosecution failed to prove the source of alcohol that was noticed in the intestine as well as the

liver of the deceased. It was submitted that PW 8 in her cross-examination had stated that her husband never consumed liquor and he was well built and if that be so, two questions would arise viz.

(a) after 6 p.m. when the deceased was taken to the house of the accused, where did he consume liquor and in whose company, and

(b) whether a well built man of about 5 ft. 5 inches height could be caused so many injuries including deadly injuries around the skull by a lady like the accused and by using two different weapons like the axe and sura.

On the presence of substantial quantity of ethyl alcohol in the intestine of the deceased the trial Court was of the view that Raghunath was made to consume liquor or he had already consumed liquor and the quantity was enough to make him drunk. While he was in the drunken state, he was assaulted by the accused and someone else whose identity remained a mystery. Both the circumstances raised by the defence have been dealt with by the trial Court in this manner.

. In our opinion the non-explanation of the source of alcohol that was found in the intestine of the deceased is inconsequential to the case of the prosecution. If PW 8 stated that her husband never took liquor, it is obvious that the said statement did not inspire confidence. Even in the spot panchanama there is nothing to indicate that any article containing liquor or indicating any traces of liquor was found in the inner room of the accused where as per the prosecution the assault had taken place. The acquittal of the minor son of the accused cannot in any way affect the case of the prosecution before us. We have perused the acquittal order passed in Juvenile Criminal Case No.1 of 2003 and we have noted that PW 8 Subhadra was not examined and Shankar Salim (PW 7) was treated to be the main witness of the prosecution (eye witness). In addition there was no discovery / recovery proved at the instance of the juvenile accused whereas it has come in the evidence of PW 9 Rane and duly supported by the panch witness PW 4 Survey that at the entrance of the inner room of the accused, blood stains were noticed on the floor and there was an attempt made by somebody to erase the blood stains. The floor

samples taken from the place have been detected stained with human blood though the blood group could not be determined. The muddemal articles have been seen by us and we have no doubt that both of them are capable of being used in an assault by a lady and more particularly a lady who was used to working as a farm labourer. Having given our anxious considerations to the multiple injuries around the skull of Raghunath, we feel that the said injuries are possible to be caused by a lady if the victim was sitting on the floor. It is obvious that he was hammered on and around his head in such a position and after he collapsed, the assault has been inflicted on all other parts of his body and mercilessly.

7. The accused could not explain the source of blood on the bangles recovered from the spot where the dead body was found, the source of blood stains on her saree and that too with blood group "AB" which obviously was the blood group of the deceased. She also could not explain the source of blood noticed on the blade as well as handle of the axe and the sura. All these circumstances were put to her while recording her statement under Section 313 of Cr.P.C.

Similarly the source of blood stains on the floor of her inner room could not be explained by her. The prosecution proved that deceased Raghunath was seen last in the company of the son of the accused and he had gone to the house of the accused. After 9.00 p.m on 26/1/2002 when PW 8 Subhadra visited the house of the accused for the third time along with her children, she was informed by the accused that Raghunath had already left the house of the accused to go to his house. This testimony of PW 8 Subhadra remained in-tact during her searching cross-examination. The contradictions or improvements sought to be brought out in her cross-examination by the defence did not in any way affect the above stated circumstances brought out by the prosecution. The accused also could not explain the reasons for her disappearance from the house since the early hours of 27/1/2002 and that she along with her son were taken in custody from the bus stop at Rhavadi, Tahsil Lanja on 28/1/2002 as ha has been proved through the evidence of PW 9 Rane and the arrest panchanama at Exhibit 31 which has been admitted by the defence. Though the complaint filed by PW 1 Ashok Paste was registered on 27/1/2002 after 11 a.m. the statement of PW 8 Subhadra was recorded

for the first time on 30/1/2002 and in her statement it was revealed that when the deceased had left his house along with the son of the accused on 26/1/2002, he had carried with him a torch and he was wearing a wrist watch of Siko company. The accused was interrogated for the first time on 28/1/2002 which resulted in the recovery of axe, sura, saree and a shirt. After Subhadra's statement was recorded on 30/1/2002, the accused was again interrogated on 31/1/2002 and it had resulted in the recovery of wrist watch and torch as per the evidence of PW 9 Rane and corroborated by the evidence of panch witness PW 4 Surve and PW 7 Khanwilkar.

8. It was contended by the defence before us as well that the dead body of Raghunath was recovered from a place which was accessible to the public. Similarly the places from which recoveries of weapons, saree and shirt as well as wrist watch and torch were made were accessible to the public and, therefore, these recoveries could not be relied upon. We are not impressed by these submissions because it has come in the evidence that the place where the dead body was found was part of the courtyard of the accused and it was behind her house (about 72 ft.

away from the room). The dead body as well as the articles recovered were concealed and covered by dry leaves and stems. The dead body was found buried in a ditch which was not sufficiently deep and, therefore, some part of the hands of the dead body was visible. The weapons, clothes, wrist watch and torch were also buried at the places they were recovered from and these were not just lying in the open as could be seen by any member of the public. All these items were also concealed / buried at the places which were isolated rarely visited by any member of the public, in a routine manner. This is clear from the evidence of the panchas PW 4 and PW 7 and the I.O. PW 9. Though the I.O. admitted that these places were accessible to all but the evidence shows that the places were such that hardly any human being other than the occupants of the concerned houses could ever be expected to be in these places and the places were particularly in the backyards of the respective houses. We, therefore, do not find much force in the contentions that the recoveries were not reliable.

9. The defence also tried to make ado much about the name of the son of the accused as was disclosed

by P W 8 Subhadra. It is undoubtedly true that in her depositions Subhadra has given the name of the accused who took the deceased to the house of the accused as Sandeep but in her statement under Section 313 of Cr.P.C. the accused has stated that she has only one son by name Mangesh and, therefore, the wrong name "Sandeep" as stated by Subhadra PW 8 does not make out a case to discard her testimony on that count alone. Recording of her statement after three days of the incident was also sought to be made an issue defeating the prosecution case. However, we do not find much substance in the same as Subhadra clearly stated in her depositions before the trial Court that after the dead body was recovered on 27/1/2002, she went home and the dead body was cremated on or after 28/1/2002. She did not speak to anyone regarding her complaints or suspicion of the accused till the police recorded her statement for the first time on 30/1/2002. This delay in recording the statement of Subhadra PW 8 does not impair the case of the prosecution and this delay of two days has been explained by the witness herself. In the rural life the widow does not come out of her house or does not meet any member of the public for a few days after the cremation of her husband and,

therefore, it is possible that Subhadra PW 8 was not available to record her statement prior to 30/1/2002.

10. To conclude we are satisfied that the prosecution case based on the circumstantial evidence has duly proved the circumstances noted hereinabove in paragraph no.5 against the accused and the said circumstances point out the involvement of the accused in committing the murder of Raghunath beyond any reasonable doubt. The suspicion of the trial Court that along with her someone else was involved does not in any way impair the findings of the trial Court that the accused was involved in committing the murder of Raghunath beyond any reasonable doubt. There is no missing link that was brought out by the defence in the chain of circumstances which has been so complete that there is no escape but to confirm that the deceased Raghunath was done to death by the accused in her house in the night on 26/1/2002 by means of weapons i.e. axe and sura. We also find that the accused was guilty of hiding the dead body of Raghunath and in fact she had sought to bury the dead body in the backyard of her house. The blood stains noticed at the entrance of her inner room were also sought to be erased. These acts are nothing

short of causing disappearance of evidence of the offence so as to screen herself from her involvement in causing the death of Raghunath. At the same time these acts could not have been done by the accused alone, more particularly burying of the dead body. She is, therefore, guilty of an offence punishable under Section 201 read with Section 34 of IPC.

11. In the result, we confirm the order of conviction and sentence passed by the learned Sessions Judge, Ratnagiri in Sessions Case No.83 of 2002 on 8/4/2003 and impugned in this appeal. Consequently, the appeal is hereby dismissed.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)